

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION**

JEFFREY BARRON,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	3:06 cv 983-MHT
WERNER ENTERPRISES, INC.,)	
and AMHAD RASHAD RANSON,)	
)	
Defendants.)	

PLAINTIFF'S MOTION TO REMAND TO STATE COURT

COMES NOW, the Plaintiff, Jeffrey Barron, and hereby respectfully requests this Honorable Court to remand the above-styled case from the United States District Court for the Middle District of Alabama to the Alabama Circuit Court for Chambers County. In support of this motion, the Plaintiffs submit the following:

- 1) At no time since the suit in the Circuit Court of Chambers County was commenced has there been any voluntary dismissal of a defendant or party to this action;
- 2) The dismissal of non-diverse defendants or parties was an involuntary action. Plaintiff contends that removal was improper because his case became removable as the result of a state court order that effectively dismissed the non-diverse defendants over Plaintiff's objections;
- 3) The dismissal of the claim against non-diverse defendants or parties amounted to a substantive issue not purely a procedural issue;
- 4) The case relied upon by Defendants for removal involved the voluntary dismissal of all non-diverse parties excluding one. (*See Insinga v. LaBelle*, 845 F.2d 249 (11th Cir. 1988). The jurisdictional/merits dichotomy in *Insinga* ignores the fact that dismissals based on

jurisdictional grounds may also be successfully appealed. There is currently pending a Motion to Alter, Amend, or Vacate the Dismissal of the non-diverse Defendant William Lewis Jennings;

- 5) Defendant, William Lewis Jennings, was sued as an individual and/or as an officer for the Chambers County Commission.

WHEREFORE, PREMISES CONSIDERED, the considerations in the cases presented indicate that the Motion to Remand should be granted.

Respectfully Submitted,

s/ Timothy L. Dillard

Timothy L. Dillard,
Attorney for Plaintiff

TRIAL COUNSEL:

Timothy L. Dillard
Stewart S. Wilbanks

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2006, I electronically filed the forgoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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